

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 10 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GARASIA SHAKRA LUMBA

Versus

STATE OF GUJARAT

Appearance:

MR JV DESAI for the appellant.

MR YF MEHTA, for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 09/12/96

ORAL JUDGEMENT:- (Per Pandya, J.)

1. Two persons came to be tried for offence under Section 302 read with Section 114, I.P.C. by the learned Additional Sessions Judge, Banaskantha, at Palanpur, in Sessions Case No.51 of 1988. By his judgment and order dated 29.11.1988, the learned Trial Judge was pleased to convict accused No.1 and acquit accused No.2. It is the

said convicted accused who has filed the present appeal.

2. The case of the prosecution against him was that, on 7.12.1987, at about 8 P.M., at village Dhanpura, taluka Palanpur, accused No.1 had given sword blows to the deceased and after having given a blow with a stone, accused No.2 had caught hold of him and thereby facilitated the task of accused No.1.

3. The prosecution had an eye-witness and that is Masrubhai Gajabhai, P.W.4, Ex.15, page 38 of the paper book. According to this witness, on the day of the incident, from village Virampur, they had gone to Dhanpur to meet the Sarpanch of that village and as the Sarpanch could not be found out, at the instance of the deceased, they went to the house of accused No.1, where in the beginning accused No.1 was not there. After initial peaceful conversation subsequent to the arrival of accused No.1 and after having a cup of tea together, both the accused along with the deceased went to the back side of the house of accused No.1. After sometime, they had started coming back and, suddenly, accused No.1 gave a stone blow to the deceased and accused No.2 caught hold of him and, in the meantime, accused No.1 rushed into the house, came back with a sword and gave two blows in the chest.

4. The post-mortem examination carried out by Dr. Mahendrabhai S. Maniar, P.W. 1, Ex.9, page 19 of the paper book, supported by P.M. Note Ex.10, clearly states that there were three external injuries, one on the head and two on the chest.

5. The third one is an incised stab penetrating wound over the chest in the left fourth intercostal space at midclavicular line from anterior to posterior of the size about 4" x 1 1/2" deep upto the heart. This injury No.3 is in page No.24 of the paper book. Corresponding injury can be found in column No.20, at page 25, where the left heart was found ruptured. The death was certain and the prosecution has clearly established that it is homicidal and could have been caused by the weapon like sword.

6. That is precisely the testimony of the said witness, who after seeing the incident, rushed to the brothers of the deceased and, as a result, the complaint came to be filed on 8.12.1987 by about 12.30 A.M. in the midnight as per Ex.14 and the complainant is examined as P.W.3, Ex.13, at page No.33.

7. The position, therefore, that emerges from the record is that the near relatives were informed by the solitary eye witness and the complaint recorded consequently at the instance of one of the brothers of the deceased contains in it the gist of the incident in the manner described above. Right from the beginning, therefore, so far as the prosecution is concerned, there is a consistent story as to the incident.

8. No doubt, the learned Advocate, Shri Desai, appearing for the accused-appellant has been able to point out from the cross-examination of the eye-witness at page 41 that till the time of the incident, he did not know either of the accused and that was his first meeting on that day. However, having sat together for an hour or so over a cup of tea, if the incident happens, even if the person has met the accused for the first time, he will immediately know who is who and what that person has done as exactly what he has narrated to the complainant and the complainant, in turn, has set it out in the form of a complaint before the Amirgadh Police Station.

9. The F.S.L. report at Ex.21 reveals that the deceased had blood of group 'O' and blood of human origin was found on the muddamal article sword having the same blood group. Same is the position with regard to the soil that was collected for analysis on the spot except that the blood group could not be determined. It did have blood of human origin.

10. Under the circumstances, we do not find any infirmity in the order of the Trial Judge and the appeal, therefore, fails and is dismissed. The order of conviction is confirmed.

...